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DEC 20
HAROLD B. WILL

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. 32.

STATE OF CALIFORNIA on Relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,
Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a Corporation Organized Under the Laws of the State of Missouri,
Defendant and Respondent.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

BRIEF FOR THE RESPONDENT.

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Defendant and Respondent.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The opinion of the St. Louis Court of Appeals of the State of Missouri appears in the printed record (R. 131-149) and is reported in 260 S. W. (2d) 821. It has not, as yet, been reported in the official reports of the Courts

of Appeals of the State of Missouri. The denial by the Supreme Court of Missouri of the application of petitioner for transfer from the St. Louis Court of Appeals to the Supreme Court of Missouri appears in the printed record (R. 157) and is not yet officially reported.

The prior opinion of the Supreme Court of Missouri, transferring the cause from that court to the St. Louis Court of Appeals, appears in the printed record (R. 120-126) as does its order of transfer (R. 126) and is reported in 248 S. W. (2d) 592. Respondent's motion for rehearing or in the alternative to transfer to the court en banc appears in the printed record (R. 127-129). The opinion of the Supreme Court of Missouri overruling that motion appears in the printed record (R. 129-130) and is reported in 248 S. W. (2d) 596.

JURISDICTION.

Petitioner asserts that jurisdiction of this court arises out of Title 28, Sections 2101-4, United States Code, rules 38 and 38½, rules of the Supreme Court of the United States. We find no jurisdictional relevancy in the cited provisions. Under them this court would have no jurisdiction.

The only provision of the U. S. Code under which this court could possibly have jurisdiction is 28 U. S. C. 1257 (3).

QUESTIONS INVOLVED.

I.

The Missouri courts found that the cause of action created by the California statutes is intransitory. Does such a finding present a federal question?

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II.

Since the decision of the St. Louis Court of Appeals rests on the independent ground that there was no competent evidence before the Missouri courts from which could be determined the amount of inheritance taxes allegedly due California, will this Court examine other grounds for the decision which might possibly involve federal questions?

III.

Can the Petitioner, after having failed to raise any federal questions in its Application for Transfer from the St. Louis Court of Appeals to the Supreme Court of Missouri, now raise federal questions before this Court?

IV.

Since the original California judgment was not res judicata or binding against Respondent, would its admission in evidence and its use as a basis for a judgment against Respondent in a Missouri Court be a deprivation of property without due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States?

V.

Can California statutes confer or impose upon Missouri courts a jurisdiction, a precise and detailed procedure, and a circumscribed method of assessing inheritance taxes, indigenous to California courts, and entirely alien to the Missouri Code of Civil Procedure?

STATUTES INVOLVED.

United States Constitution, Article IV, Section 1:

> "Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

United States Constitution, Fourteenth Amendment, Section 1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Revenue and Taxation Code:

> "§ 14501. **Appointment of appraiser.** At or prior to the time of the appointment of the probate appraiser or appraisers pursuant to Section 605 of the Probate Code, the superior court having jurisdiction in probate of the estate of any decedent, or a judge of that court, shall designate and appoint an inheritance tax appraiser to ascertain and submit a report to the court on the following:
>
> "(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

"(b) The amount of tax, if any, which is due and payable on each transfer.

"(c) Such other facts regarding the tax as will assist the court in the determination of the tax.

"§ 14502. **Powers of appraiser.** Upon his designation and appointment the inheritance tax appraiser has:

"(a) Jurisdiction to require the attendance before him of the executor, administrator, any person interested in the estate, or any other person who he may have reason to believe possesses knowledge of the estate, of any property transferred by the decedent by a transfer subject to this part, or of any facts that will aid the appraiser or the court in the determination of the tax.

"(b) All the powers of a referee of the superior court.

"§ 14506. **Report.** Upon the completion of his appraisement the appraiser shall file a written report with the superior court setting forth the following:

"(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

"(b) The amount of tax which is due and payable on each transfer.

"(c) Such other facts as may advise the court in regard to the tax, or which the court may require.

"In addition to filing the report, the appraiser may file with the court any deposition, exhibit, other evidence, or other information taken before or submitted to him.

"§ 14507. **Copy to Controller.** Upon filing the report the appraiser shall mail a copy to the Controller.

"§ 14508. **Notice of filing.** On the day that the report is filed, or on the next succeeding judicial day, the clerk of the superior court shall give notice of the filing to all persons interested by causing a notice to be posted at the courthouse in the county where the court holds its sessions, and shall mail a copy of the notice to the Controller and to each person chargeable with any tax in the report who has appeared in the probate proceeding.

"§ 14509. **Order fixing tax where no objections.** If no objection to the report is filed prior to the expiration of 10 days from and after the posting and mailing of the notice, the superior court, a judge of the court, or, if the court is located in a county or city and county having a population of 900,000 or more, a court commissioner appointed by the court may, without further notice, make an order confirming the report and fixing the tax in accordance therewith.

"§ 14510. **Objections.** At any time prior to the making of the order, any person interested, including the Controller, may file a written objection to the report.

"§ 14511. **Notice of hearing.** If an objection is filed, the clerk of the superior court shall fix a time, not less than 10 days after the filing, for a hearing on the objection, and shall give notice of the hearing by posting a notice of hearing at the courthouse in the county where the court holds its sessions, and by forthwith mailing a copy to the objection and of the notice to the Controller, executor, administrator, and the inheritance tax appraiser.

"§ 14512. **Report presumed correct.** For the purpose of the hearing the report of the inheritance tax appraiser is presumed to be correct, and at the hearing it is the duty of the objector to proceed in support of his objection.

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"§ 14513. **Order.** Upon the completion of the hearing the court may make such order as to it may seem appropriate.

"§ 14651. **Probate court.** The superior court which has acquired jurisdiction in probate of the estate of any decedent shall hear and determine in the probate proceedings all questions relative to any tax imposed by this part on each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

"§ 14652. **Where resident decedent leaves no estate, etc.** The superior court of the county in which a decedent who was a resident of this State resided at the time of his death has jurisdiction to hear and determine all questions relative to any tax imposed by this part on any transfer made by the decedent where the decedent either (a) leaves no estate or (b) leaves an estate in which the property transferred is not included and the transferee does not share."

California Political Code:

"§ 3671e. The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by other States which extend a like comity to this State.

"The Attorney General is hereby empowered to bring suits in the courts of other States to collect taxes legally due this State. The officials of other States which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the Secretary of State under the great seal of the State that such officers have authority to collect the tax shall be conclusive evidence of such authority."

STATEMENT.

The State of California at the relation of Fred N. Houser, its then attorney general, filed suit in the Circuit Court of the County of St. Louis, State of Missouri, seeking recovery of inheritance taxes allegedly assessed on behalf of the State of California during the course of administration in that state of the estate of Mary Agnes Rogers, and allegedly remaining due and unpaid. The defendants named in the Missouri action were the St. Louis Union Trust Company, a Missouri corporation, as trustee under a certain indenture of trust created by the decedent, Mary Agnes Rogers, other defendant residents of Missouri named as beneficiaries in said indenture of trust and a corporate beneficiary, Bellefontaine Cemetery Association, a Missouri corporation (R. 1-24).

Decedent, Mary Agnes Rogers, was originally a resident of Missouri (R. 133, 134). During her lifetime, on July 8, 1936, she created a revocable trust, under the terms of which she transferred to St. Louis Union Trust Company, as trustee, certain intangible personalty. The terms of the trust reserved the income to herself for life and provided for distribution to certain named beneficiaries at her death (R. 81-87). During her later years she lived in California and died there on June 14, 1945 (R. 133, 134).

After her death her will was filed for probate in the Superior Court of Los Angeles County, California, and her estate was administered by the public administrator of that county (R. 134, 137). Petitioner alleged that during the course of that administration certain inheritance taxes were assessed in California, which taxes were determined by including the value of the assets of the Missouri trust estate, as well as the value of other property physically located in California and subject to the jurisdiction of its

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courts (R. 132). Petitioner also alleged that during the course of administration the public administrator used the assets physically within California to pay expenses of administration, a Federal estate tax, and a portion of the California inheritance taxes, leaving unpaid California inheritance taxes in the amount of $4,349.75 (R. 132).

During the course of probate administration in California none of the defendants named in the original pleadings was within California or in any way personally subject to the jurisdiction of its courts (R. 137). Respondent, St. Louis Union Trust Company, during such period, was and still is, a Missouri corporation not qualified to do or doing business in California, and none of the assets comprising the trust estate was physically located within California (R. 136).

At the trial the only evidence sought to be introduced by petitioner was evidence allegedly as to the domicile of decedent, Mary Agnes Rogers, evidence allegedly supporting the fact that a proceeding was had in California for determination of California inheritance taxes, evidence as to the amount of such taxes, and evidence allegedly supporting the balance of California inheritance taxes remaining unpaid. After the trial the trial court dismissed as to all of the defendants except respondent, and found in favor of the petitioner and against respondent for the relief prayed in the petition (R. 108).

Respondent appealed to the Supreme Court of Missouri, which court transferred the cause to the St. Louis Court of Appeals on the ground that Respondent had failed to properly raise a State constitutional or a Federal constitutional question (R. 120-126). Respondent then filed its motion for rehearing, or in the alternative, to transfer to the court en banc (R. 127-129). This motion was denied by the Supreme Court of Missouri (R. 129-130) and the

cause was transferred to the St. Louis Court of Appeals (R. 126).

The St. Louis Court of Appeals reversed the decision of the St. Louis County Circuit Court on two bases: First, that California had created a cause of action for the assessment and collection of inheritance taxes not cognizable in Missouri courts and, second, that Petitioner had failed to introduce sufficient competent evidence to support whatever cause of action it may have had (R. 131-149). The Petitioner then filed in the St. Louis Court of Appeals a motion for rehearing or, in the alternative, for transfer to the Supreme Court of Missouri (R. 151-152), which motion was denied October 16, 1953 (R. 152).

Thereafter Petitioner filed in the Supreme Court of Missouri an Application for Transfer of the cause from the St. Louis Court of Appeals to the Supreme Court of Missouri, which application failed in any wise to raise or call to the attention of the Supreme Court of Missouri any state constitutional or federal constitutional question, but sought review only on the grounds that a conflict allegedly existed between the instant decision by the St. Louis Court of Appeals and an older decision of the St. Louis Court of Appeals, **State ex rel. Oklahoma Tax Commission v. Rodgers et al.**, 238 Mo. App. 1115, 193 S. W. (2d) 919, 165 A. L. R. 785 (R. 154-156). The application was denied without opinion by the Supreme Court of Missouri on December 14, 1953 (R. 157). On application of the Petitioner the St. Louis Court of Appeals stayed its mandate to the trial court by an order entered January 15, 1954 (R. 159). The Writ of Certiorari was granted by the Supreme Court of the United States on or about the 14th day of October, 1954. Respondent's attorneys received by mail three copies of the Brief for Petitioner on November 24, 1954.

SUMMARY OF ARGUMENT.

During the period of time involved in the administration of the Estate of Mary Agnes Rogers in the State of California, California had in force a precise and detailed system for the determination of inheritance taxes involving special procedures for giving notice, posting notices, appointment of an appraiser, report of the appraiser, approval of the report by the Court, order of the Court, etc., and providing that all those things take place under the supervision and control of the Superior Court of California of the County where decedent resided at time of death (California Revenue and Taxation Code).

Without amending these inheritance tax statutes, California passed a general statute purporting to give authority to the Attorney General to sue in other states "to collect taxes legally due this state" (California Political Code, §3671e).

California courts, at the time of the various decisions by the Missouri courts, had made no determination as to the nature of the cause of action so created. The Missouri courts in the instant case determined that California had created an intransitory cause of action, not cognizable by Missouri courts. The St. Louis Court of Appeals states that its decision was made after a careful examination of the California statutes and the applicable California decisions. That court found that the right created by the California inheritance tax laws "is inextricably bound up with a prescribed statutory remedy available only in California" (R. 144), and that consequently the cause of action was an intransitory one. There is no federal question to be found in this independent determination by the Missouri Courts. **Glenn v. Garth**, 147 U. S. 360, 37 L. Ed. 203, 13 S. Ct. 350.

California could have created a transitory cause of action which would have been cognizable in the courts of Missouri, but the Missouri courts deny that California, at the time this case arose, had created such a cause of action (R. 145, 146, 148). See **State ex rel. Oklahoma Tax Commission v. Rodgers**, 238 Mo. App. 1115, 193 S. W. 2d 919, 165 A. L. R. 785.

In other words, the Missouri courts have said in this case that California created a cause of action and confined the remedy to specially created California machinery; that in so doing, California did not have the power to invest the courts of Missouri with the same machinery, so necessary to the prescribed remedy. The Missouri courts also decided that the statutes of Missouri have not invested Missouri courts with the power and authority necessary to the determination of California inheritance tax liability. For such reasons, the St. Louis Court of Appeals correctly decided that petitioner had no cause of action cognizable in Missouri courts. **Pollard v. Bailey**, 20 Wall. (87 U. S.) 520, 22 L. ed. 376.

The St. Louis Court of Appeals in its opinion fully considered and construed the California statutes and, by so doing, gave full faith and credit to such statutes. Therefore, even if the conclusions reached by the St. Louis Court of Appeals were erroneous, such error would not constitute a denial of full faith and credit, and would not present a federal question. **Western Life Indemnity Co. v. Rupp**, 235 U. S. 261, 59 L. ed. 220, 35 S. Ct. 37.

Further, the Missouri courts reached the decision in this case after finding that the Petitioner had failed to present sufficient competent evidence to support any cause of action, whether transitory or not. Under such circumstances, this court will not seek out a federal question, even should there be one, for the mere purpose of obtaining jurisdiction in order to re-examine the action taken by

the Missouri courts. This is an adequate non-federal ground for the decision by the Missouri courts and this court will not inquire beyond the adequacy of that ground in order to examine a possible federal question. **Klinger v. Missouri**, 13 Wall. (80 U. S.) 257, 20 L. ed. 635. Besides, a judgment against the respondent in this case would violate the provisions of the Due Process clause of the Fourteenth Amendment to the Constitution of the United States, since it would have to be based upon a California judgment to which respondent was not a party. Peanoyer v. Neff, 95 U. S. 714, 24 L. ed. 565. **Riley v. New York Trust Co.**, 315 U. S. 343, 86 L. ed. 885, 62 S. Ct. 614.

Finally, the petitioner failed to raise any constitutional questions, state or federal, in its application for transfer to the Supreme Court of Missouri (R. 154-156). The Missouri Supreme Court would not hear any federal question petitioner failed to raise, and this court will not pass on any federal questions not properly raised and preserved before the Missouri Supreme Court. **City of St. Louis v. Butler Co.**, 358 Mo. 1221, 219 S. W. 2d 372; **Bailey v. Anderson**, 326 U. S. 203, 90 L. ed. 3, 66 S. Ct. 66.

ARGUMENT.

I.

A. The Construction by Missouri Courts That the Cause of Action Created by the California Statutes Is Intransitory in Nature Presents No Federal Question.

The decision of the St. Louis Court of Appeals for the State of Missouri determining the nature of the cause of action created by the California statutes applicable to this case is not a denial of full faith and credit to those statutes. In construing the California statutes, the St. Louis Court of Appeals held (R. 145):

> "We find on reading the California statutes that a remedy is prescribed, and that it must be pursued in a specifically designated California court; not in any court of any state, nor even in any Superior Court in California, but in a single Superior Court, namely, in 'the superior court which has acquired jurisdiction in probate of the estate of any decedent,' Sec. 14651, Rev. and Tax Code, or if there be no estate, the superior court of the county in which the decedent resided at the time of his death, Sec. 14652. By Sec. 14501, that specified court appoints an inheritance tax appraiser, who has 'all the powers of a referee of the superior court,' Sec. 14502. He files his report in the court, and the Clerk of the Superior Court gives notice 'by causing a notice to be posted at the courthouse in the county where the court holds its sessions' etc., Sec. 14508. Ultimately, the court enters its judgment or order fixing liability for the tax. It is needless to recite other provisions, showing that the statute prescribes a remedy in a specified California court. This calls for application of the rule of the last cited group of cases."

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also (R. 146):

> ". . . There is nothing in the Inheritance Tax Statute of California which indicates that the legislature intended to create a right on which the state could sue in a foreign state, instead of being confined to a remedy in a specified superior court of California. The statute under which the Attorney-General of California asserts power to sue is a general statute, part of the Political Code of California, when this suit was brought, as Section 3671 (e) thereof. It grants generally power to bring suit 'to collect taxes legally due this State,' without specific reference to inheritance taxes."

and further (R. 148):

> "In summation, we find that the new type of procedure here ingeniously attempted by the plaintiff cannot be accepted because of the principle established above, that when statutory right and remedy are intertwined, as here, the prescribed remedy must be followed, and being limited by the statutory prescription to a local court, the remedy cannot be pursued extraterritorially. The claim for inheritance tax as created in California is not truly transitory (regardless of whether it might conceivably have been made so) but has been localized by the requirement of California court procedure and California judgment."

What the St. Louis Court of Appeals did was to examine at length the applicable California statutes and to endeavor to find decisions of California courts interpreting those statutes. Having found no California decisions which in any way shed any light on the nature of the California cause of action, the St. Louis Court of Appeals proceeded to make its own determination as to the nature of the cause of action created by the California statutes.

This it was free to do and its decision in this regard will not be disturbed by this court. **Louisville & Nashville Railroad Company v. Melton,** 218 U. S. 36, 54 L. ed. 921, 30 S. Ct. 676; **Allen v. Allegheny Co.,** 196 U. S. 458, 49 L. ed. 551, 25 S. Ct. 311; **Banholzer v. New York Life Ins. Co.,** 178 U. S. 402, 44 L. ed. 1124, 20 S. Ct. 972; **Finney v. Guy,** 189 U. S. 335, 47 L. ed. 839, 23 S. Ct. 558.

Petitioner argues under Point I of its argument that California law provides a transitory cause of action for the assessment and collection of California inheritance taxes and argues under Point II that it is the duty of this court to examine the nature of the California cause of action and to correct the St. Louis Court of Appeals if that court erred. Petitioner's argument must be posited on the assumption that the full faith and credit clause of the federal constitution requires that the courts of Missouri interpret the California statutes here involved in such fashion that this court would approve the construction were it sitting as a part of the state judicial structure of Missouri. This would mean that this court would raise a corrective hand in every instance in which a state court construed the statute of another state in a fashion deemed to be to the detriment of the party invoking the full faith and credit clause.

In **Glenn v. Garth,** 147 U. S. 360, 368, 369, 370, 37 L. ed. 203, 206, 13 S. Ct. 350, this court disposed of similar contentions:

> "If we were to assume jurisdiction of this case, it is evident that the question submitted would be, not whether the decision of the New York court was against a right specially set up and claimed under the Constitution of the United States, or necessarily arising, but whether in that decision error intervened in the construction of the statutes of Virginia. If every time the courts of a state put a construction

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upon the statutes of another state, this court may be required to determine whether that construction was or was not correct, upon the ground that if it were concluded that the construction was incorrect, it would follow that the state courts had refused to give full faith and credit to the statutes involved, our jurisdiction would be enlarged in a manner never heretofore believed to have been contemplated."

* * * * * * *

"This record may be searched in vain for any proof that, as matter of fact, the public acts of Virginia had, by law or usage in Virginia, any other effect than was given them in New York; nor can the contention of counsel, that the Virginia statutes should be construed according to their views, be treated as the equivalent of the express assertion of a right arising under the Constitution or laws of the United States."

So also where the affected party argued specifically, as does Petitioner here, that the error of the state court had been demonstrated and that this court should correct it, this court held:

"It is earnestly argued that the court erred in its construction of the Illinois statute. We do not pass upon this question, deeming it to be outside of the limits of our jurisdiction; for it is settled that where, in a state court, the validity of an act of the legislature of another state is not in question, and the controversy turns merely upon its interpretation or construction, no question arises under the 'full faith and credit' clause of the Federal Constitution. . . ."

Western Life Indemnity Co. v. Rupp, 235 U. S. 261, 275, 59 L. ed. 220, 225, 35 S. Ct. 37.

See in addition such cases as **Louisville & Nashville Railroad Company v. Melton**, 218 U. S. 36, 54 L. ed. 921, 30

S. Ct. 676; **Allen v. Allegheny Co.**, 196 U. S. 458, 49 L. ed. 551, 25 S. Ct. 311; **Banholzer v. New York Life Ins. Co.**, 178 U. S. 402, 44 L. ed. 1124, 20 S. Ct. 972,; **Finney v. Guy**, 189 U. S. 335, 47 L. ed. 839, 23 S. Ct. 558.

II.

Inasmuch as the Decision of the St. Louis Court of Appeals Rests on the Ground, Among Others, That There Was No Competent Evidence Before the Missouri Courts From Which They Could Have Determined the Amount of Inheritance Taxes Allegedly Due California, This Court Will Not Attempt to Examine Other Grounds Which Might Possibly Involve Federal Questions.

At the trial of this cause Petitioner made no effort to have the Missouri court independently determine any of the facts necessary for the determination of the California inheritance tax, and the only question of fact actually litigated was that of domicile of the decedent, Mary Agnes Rogers. To support its allegations as to the assets of the estate, the beneficiaries thereof and their relationship to decedent, the interest and the value thereof received by each beneficiary, the expenditures made on behalf of the estate by the California Administrator, and such other facts as were necessary for the determination of the California inheritance tax, Petitioner, in the words of the St. Louis Court of Appeals:

> "... offered in evidence as its chief reliance in this case the June 24, 1947, judgment of its Superior Court (by a 'Court Commissioner' whose status and authority are not established in this record, but that issue is not before us) approving and confirming the report of its inheritance tax appraiser, finding that the market value of the property subject to inheritance

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tax is $98,152.27 and assessing and fixing the liabilities of named heirs (Exh. A); and the account and report of its public administrator and petition for discharge, nothing for distribution, with order of August 9, 1948, approving said account and granting said petition (Exh. B). Parenthetically, it might be noted that although a copy of the Report of the Inheritance Tax appraiser was attached to the petition as an exhibit, no authenticated copy of same was ever offered in evidence. However, some questions were asked concerning said report, whereby some of the contents thereof came into evidence.

"Without said Exhibit A and Exhibit B plaintiff would have been without evidence of the value of decedent's estate, especially her California assets and of the computation and assessment of inheritance tax. . . ." (R. 143, 144).

It must be remembered that the court in speaking as it did above, was answering the following question which it had put to itself:

"Thus, in effect, plaintiff contends that it here pursued, and was entitled to pursue a third procedure, viz., that it sued in Missouri to have defendant's liability for inheritance tax determined without relying on any prior California adjudication as a judgment, but using prior California court orders as evidence or proof of its case. May this be done?" (R. 143.)

Thus, the court found that the Respondent had failed to offer competent evidence in support of its cause of action. This finding is an adequate non-federal ground sufficient to support the decision, and therefore, this court will not go beyond that finding to seek out a possible federal question.

In **Klinger v. Missouri**, 13 Wall. (80 U. S.) 257, 263, 20 L. ed. 635, 637, the court said:

> "The rules which govern the action of this court in cases of this sort are well settled. Where it appears by the record that the judgment of the state court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent ground, and it appears that the court did, in fact, base its judgment on such independent ground, and not on the law raising the Federal question, this court will not take jurisdiction of the case, even though it might think the position of the state court an unsound one. But where it does not appear on which of the two grounds the judgment was based, then, if the independent ground on which it might have been based was a good and valid one, sufficient of itself to sustain the judgment, this court will not assume jurisdiction of the case; but if such independent ground was not a good and valid one, it will be presumed that the state court based its judgment on the law raising the Federal question, and this court will then take jurisdiction. . . ."

See also **Buck v. California**, 343 U. S. 99, 96 L. ed. 775, 72 S. Ct. 502; **Fox Film Corp. v. Muller**, 296 U. S. 207, 80 L. ed. 158, 56 S. Ct. 183; **Lynch v. New York ex rel. Pierson**, 293 U. S. 52, 79 L. ed. 191, 55 S. Ct. 16; **Allen v. Arguimbau**, 198 U. S. 149, 49 L. ed. 990, 25 S. Ct. 622.

III.

Petitioner Having Failed to Raise Any Constitutional Questions in Its Application for Transfer to the Supreme Court of Missouri, and Having Failed to Assert Any Specific Federal Rights or Questions in Its Original or Amended Pleadings in the Trial Court, Cannot Now Assert Such Rights or Raise Such Questions.

The Petitioner did not assert the federal questions, which it now raises, in its pleadings before the Trial Court; as a matter of fact, its pleadings seem to be based upon the theory of giving full faith and credit to a final judgment of a California court, not seeking full faith and credit for California statutes.

But, moreover, even if petitioner had raised a federal question in its initial pleadings, it must preserve that question throughout. An examination of Petitioner's Application for Transfer to the Supreme Court of Missouri (R. 154-156) discloses that Petitioner failed in any wise to call to the attention of the court any "violation of its rights under the United States Constitution" (Petitioner's Brief, pp. 15, 16). Review was sought by Petitioner in the Supreme Court of Missouri on the grounds that a conflict allegedly existed between the instant decision by the St. Louis Court of Appeals and an older decision of the St. Louis Court of Appeals, **State ex rel. Oklahoma Tax Commission v. Rodgers**, 238 Mo. App. 1115, 193 S. W. 2d 919, 165 A. L. R. 785. In this final and necessary step before the Supreme Court of Missouri the Petitioner failed to raise or preserve the questions which it now asserts before this court. Petitioner did not, as required by Missouri procedure, call specific attention to the federal questions which it now seeks to assert. Under the decided cases of Missouri, failure to specify federal questions precludes their consid-

eration by the highest State Court. **City of St. Louis v. Butler Co.**, 358 Mo. 1221, 319 S. W. 2d 372. Under these circumstances, this court will not consider any such question. **Parker v. Illinois**, 333 U. S. 571, 92 L. ed. 886, 68 S. Ct. 708; **Bailey v. Anderson**, 326 U. S. 203, 90 L. ed. 3, 66 S. Ct. 66; **Herndon v. Georgia**, 295 U. S. 441, 79 L. ed. 1530, 55 S. Ct. 794; **John v. Paullin**, 231 U. S. 583, 58 L. ed. 381, 34 S. Ct. 178.

IV.

Since the Original California Judgment Was Not Res Judicata or Binding Against Respondent, Its Admission in Evidence and Its Use as a Basis for a Judgment Against Respondent in a Missouri Court Would Be a Deprivation of Property Without Due Process of Law, Contrary to the Fourteenth Amendment to the Constitution of the United States.

Respondent, to succeed here, must be permitted to use as evidence the judgment of the California court determining the amount of inheritance taxes assessed against the Estate of Mary Agnes Rogers (R. 20, 21) or the report of the California Inheritance Tax Appraiser upon which the California judgment was purportedly based (R. 22-24), and an instrument purporting to be the first and final account and report and petition for discharge filed in the Superior Court of the State of California in and for the County of Los Angeles, In the Matter of the Estate of Mary Agnes Rogers, deceased (R. 39-41). Without the use of these documents as evidence Petitioner would have no proof either as to the amount of inheritance taxes which had purportedly been assessed against the estate or the amount which remained unpaid and presently due and owing. Absent such documents, there is no evidence to support any cause of action by Petitioner against Respondent (R. 144).

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The validity of the action taken by the California court, in so far as it affected persons and property before the California court, is not open to question, but neither the Respondent nor any of the defendants in the original proceeding in the St. Louis County Circuit Court were subject to the jurisdiction of the California courts, as Petitioner has admitted (R. 142). In so far as Respondent is concerned, the determination of facts by the California court was an ex parte determination and, therefore, not binding upon Respondent in any way.

Principles which would be dispositive of the case presently before this court were expressed in a case involving a somewhat comparable fact situation. **State of Minnesota v. Karp**, 84 Ohio App. 51, 60, 84 N. E. 2d 76, 80:

> "It seems to us that the amended petition in the case at bar discloses even more clearly that Minnesota had nothing within its borders upon which to exercise its power. The defendant at no time was a resident of the state. It is not alleged that he was ever in the state. No property was sequestered. The only suggested basis for the exercise of its sovereignty is that in 1940 he had received income from business transacted in Minnesota. Where or in what manner he received it is not shown. In this situation in 1944, the Commissioner of Taxation, an administrative officer, without personal service, assessed this tax which under the law was made prima facie evidence against the defendant. That, it seems to us, was an attempt by Minnesota to extend its sovereignty beyond its boundaries and control and bind the defendant. No such power resides in any state and an attempt to so extend its power is void and violates the Fourteenth Amendment to the Constitution of the United States. To give effect to such an attempt would be to deprive the defendant of property without due process of law.

"We are of the opinion that the amended petition fails to show a cause of action enforceable in Ohio."

Assuming an even stronger case for Petitioner, one in which probate proceedings had been instituted in Missouri in the Estate of Mary Agnes Rogers, as well as California proceedings, the evidence relied upon by petitioner could not have been used in an action against the Missouri administrator. **First National Bank v. Dowdy**, 175 Mo. App. 478, 482, 161 S. W. 859, 860:

"The rule is that, 'A judgment against an ancillary administrator furnishes no cause of action, and is not even evidence against the domiciliary executor or administrator' (2 Wharton on Conflict of Laws [3 Ed.], par. 629a, p. 1382; Stacey v. Thrasher, 6 Howard 44; Braithwaite v. Harvey, 27 L. R. A. 101). An unlimited number of cases might be cited upon this proposition, but those above cited will give the inquiring mind an opportunity to find the majority of the decisions touching this question. It appears that the authorities are uniform on this proposition."

To recognize the evidence sought to be introduced by Petitioner as determinative in Missouri courts as to Respondent of the amount of the California inheritance taxes and the amount thereof remaining unpaid, would do violence to the Fourteenth Amendment to the Constitution of the United States as a deprivation of property without due process of law. **McDonald v. Mabee**, 243 U. S. 90, 61 L. ed. 608, 37 S. Ct. 343, L. R. A. 1917 F 458; **Pennoyer v. Neff**, 95 U. S. 714, 24 L. ed. 565; **Dull v. Blackman**, 169 U. S. 243, 42 L. ed. 733, 18 S. Ct. 333; **Riley v. New York Trust Co.**, 315 U. S. 343, 86 L. ed. 885, 62 S. Ct. 614.

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V.

California Statutes Cannot Confer or Impose Upon Missouri Courts a Jurisdiction and a Mode of Procedure for the Determination and Assessment of California Inheritance Taxes Entirely Alien to the Missouri Code of Civil Procedure.

California has by statute created a system of inheritance taxation and by such statutes has provided the means for the assessment and collection of such taxes within California. That state has, therefore, created a right and provided a remedy for the enforcement of such right. This right and its concomitant remedy are novel in the sense that they are wholly unknown to the common law and are also novel in the sense that no court of general jurisdiction in the State of Missouri has the powers given by California statutes to California courts for the assessment and collection of such tax. This statutorily created cause of action is not one which the common law considered transitory, nor is it comparable to any cause of action generally recognized as transitory.

Under the California Revenue and Taxation Code, Section 14501 provided, during the period in question, that a specific California Court shall " . . . designate and appoint an inheritance tax appraiser to ascertain and submit a report to the court on the following:

(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

(b) The amount of tax, if any, which is due and payable on each transfer.

(c) Such other facts regarding the tax as will assist the court in the determination of the tax."

Section 14502 of the Revenue and Taxation Code gives such appraiser " . . . all the powers of a referee of the Superior Court." Section 14506 provides that the appraiser file a written report with the Superior Court, setting forth the items specified in Section 14501. Section 14508 requires the Clerk of the Superior Court to give notice " . . . by causing a notice to be posted at the courthouse in the county where the court holds its sessions, and shall mail a copy of the notice to the Controller and to each person chargeable with any tax in the report who has appeared in the probate proceeding." Sections 14509 and 14511, respectively provide for confirmation of the report and for hearing of objections if such are filed.

But at the end of the California proceeding what was the net effect of an appraiser's report which had been confirmed by the Superior Court in which it was filed? It resulted in a judgment which California considered binding upon the property subject to the processes of the California court and upon the parties who were personally subject to the processes of the court. **Worchester County Trust Co. v. Riley**, 302 U. S. 292, 298, 82 L. ed. 268, 274, 58 S. Ct. 185; **In re Rath's Estate**, 10 Cal. 2d 399, 75 P. 2d 509, 115 A. L. R. 836; **In re Atwell's Estate**, 85 Cal. App. 2d 454, 193 P. 2d 519.

Thus, Petitioner began his Missouri proceeding with a California judgment binding upon such property as was before the California court and upon such persons who were before the California court, but certainly not binding as to any other property or as to anyone else. California has recognized that a California court cannot make its findings of fact binding on persons over whom it has no jurisdiction. **Rediker v. Rediker**, 35 Cal. 2d 796, 221 P. 2d 1, 20 A. L. R. 2d 1152.

Petitioner recognizes that it cannot rest its claim upon the California judgment as one entitled to full faith and

credit under the Federal Constitution (R. 142). Petitioner has also disclaimed the right to require the courts of Missouri to follow the procedural requirements of the California Inheritance Tax laws (R. 142, 143). Hence, Petitioner seeks to assert that the California statutes created a cause of action transitory in nature which this court will require the courts of Missouri to recognize and enforce. But then he is met with the fact that this is a situation wherein the right is coupled with a provision for a speedy remedy, which remedy alone must be employed. **Pollard v. Bailey,** 20 Wall. (87 U. S.) 520, 526, 22 L. ed. 376, 378; **Tennessee Coal, Iron and Railroad Co. v. George,** 233 U. S. 354, 359, 58 L. ed. 997, 999, 34 S. Ct. 587; **Galveston H. & S. A. R. Co. v. Wallace,** 223 U. S. 481, 490, 56 L. ed. 516, 522, 32 S. Ct. 205; **Stewart v. B. & O. R. Co.,** 168 U. S. 445, 42 L. ed. 537, 18 S. Ct. 105; **Fourth National Bank v. Francklyn,** 120 U. S. 747, 753, 30 L. ed. 825, 828, 7 S. Ct. 757; **Davis v. P. E. Harris & Co.,** 25 Wash. 2d 664, 171 P. 2d 1016; **Mosely v. Empire Gas & Fuel Company,** 313 Mo. 225, 245, 281 S. W. 762, 767, 768, 45 A. L. R. 1223.

The argument which petitioner is making, that it is entitled to succeed in having the courts of Missouri create a new method for the assessment and collection of California Inheritance Taxes, also appeared in a case decided in 1920 by the New York Court of Appeals, **State of Colorado v. Harbeck,** 232 N. Y. 71, 81, 133 N. E. 357, 358:

> " . . . Irregular assessments and unauthorized methods of collection may not be justified by pointing out difficulties in the practical application of the statute as written and appealing to the moral sense to meet the objection that no legal liability has been established against the beneficiaries. No substitute for the statutory method of collecting taxes, as such method is expressed or fairly implied, may be invoked either in the State of Colorado or elsewhere."

An analogous situation occurred in **Slater v. Mexican National Railroad Company**, 194 U. S. 120, 128, 48 L. ed. 903, 24 S. Ct. 581.

This is not a situation wherein the courts of Missouri are arbitrarily refusing to recognize and enforce a cause of action arising under the laws of one state while recognizing and enforcing a similar cause of action arising under the laws of another state, which seems to be the basis for Petitioner's argument on pages 28 and 29 of its brief. Cf. **First National Bank of Chicago v. United Air Lines**, 342 U. S. 396, 398, 96 L. ed. 441, 445, 72 S. Ct. 421.

Nor is this a situation wherein the courts of Missouri are arbitrarily refusing to recognize and enforce a cause of action arising under the laws of another state while recognizing and enforcing a similar cause of action arising under its own laws, which seems to be the basis for the argument made by Petitioner on page 21 of its brief. Cf. **Hughes v. Fetter**, 341 U. S. 609, 611, 95 L. ed. 1212, 1216, 71 S. Ct. 980.

Further, this is not a situation wherein the courts of Missouri are refusing access on the grounds of public policy of the State of Missouri, Cf. **Hughes v. Fetter**, supra; **Broderick v. Rosner**, 294 U. S. 629, 643, 79 L. ed. 1100, 1108, 55 S. Ct. 589, 100 A. L. R. 1133; nor yet a situation wherein a state has created a transitory cause of action and attempted to restrict its enforcement to its own courts. Cf. **Tennessee Coal, Iron and Railroad Co. v. George**, 233 U. S. 354, 360, 58 L. ed. 997, 1000, 34 S. Ct. 587; **Atchison, Topeka & Santa Fe Railway Company v. Sawers**, 213 U. S. 55, 70, 53 L. ed. 695, 702, 29 S. Ct. 397. See pages 20 and 21 of Petitioner's brief.

It has been argued by Petitioner on page 21 of its brief that this is a situation wherein both California and Mis-

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souri have created comparable causes of action for both have somewhat comparable inheritance tax statutes. This is true and serves to illustrate the point, for Missouri also requires that inheritance taxes be determined in a particular way, by particular procedures, under the supervision of a special Missouri court of limited jurisdiction. Chapter 145, R. S. Mo. 1949. See **State of Colorado v. Harbeck**, 232 N. Y. 71, 81, 133 N. E. 357, 358; **Slater v. Mexican National Railroad Company**, 194 U. S. 120, 128, 48 L. ed. 900, 903, 24 S. Ct. 581.

Petitioner has also argued that Missouri courts have refused petitioner equal protection of its laws and has denied to the citizens of California the privilege it extends to the citizens of Oklahoma in violation of Section 1 of the Fourteenth Amendment to the United States Constitution (Page 29, Petitioner's Brief). This argument is based upon Petitioner's contention that **State ex rel. Oklahoma Tax Commission v. Rodgers et al.**, 238 Mo. App. 1115, 193 S. W. 2d 919, 165 A. L. R. 785, is a case involving a cause of action comparable to the cause of action in the case at bar. This is a mistaken view of that case. The Oklahoma Tax Commission case came before the St. Louis Court of Appeals on an appeal from an order of the trial court sustaining a demurrer to the petition. In view of the demurrer, the following pleadings were admitted as facts: that Mr. and Mrs. Rodgers had been residents of Oklahoma during the various years involved, 1933 through 1936, inclusive; that they did file state income tax returns while they were residents of Oklahoma; that under the laws of Oklahoma and by virtue of the tax returns so filed, they became indebted to the state in the amounts designated by the Tax Commission acting on such returns; that the defendants had moved out of the state without paying the taxes for which they were then indebted to the state; that the state was pursuing them and suing them for that debt.

As a result, the only issue raised in the St. Louis Court of Appeals and decided in the Oklahoma Tax Commission case was whether the public policy of Missouri prohibited Missouri courts from entertaining causes of action based on the revenue laws of another state. The issues presently before the Supreme Court of the United States were not present in that case.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri should be dismissed, or in the alternative, that the decision of the St. Louis Court of Appeals should be affirmed.

Respectfully submitted,

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